

The Examiner apparently made an effort to establish the publication date of the Bontchev article.

However, it is submitted that this effort fails in light of the Rule 131 declaration included herein establishing a date of conception and constructive reduction to practice, coupled with diligence, prior to the alleged publication date of the Bontchev article.

First, the Examiner apparently made some effort to show that the Bontchev article was "known to others" as early possibly as late July, 1996. However, this attempt clearly fails. 35 U.S.C. Section 102 (a) requires that the reference be one wherein "the invention was known or used by others in this country . . . before the invention thereof by the Applicant for a patent" (emphasis added). However there is no indication that the contents of the Bontchev article were known or used by others in the United States. Bontchev himself was apparently resident in Iceland per his E-mail to the Examiner and his article. Moreover, the publishers of the article were in Great Britain. There is no indication that the contents of the article were known to anyone in the United States prior to its actual publication. Hence the §102(a) rejection based being on known or used by others clearly fails.

Therefore the Examiner is thrown back on the actual publication date of the Bontchev article. Taking arguendo that the Bontchev article was published in September, 1996 (this is not conceded), the enclosed Rule 131 declaration establishes that the present invention was conceived at least as early as August 2, 1996, and there was diligence by the patent attorney from that date up to the October 2, 1996, application filing date which constitutes a constructive reduction to practice. Note that the declaration establishes diligence under MPEP 2138.06, pp 2100-99.

Therefore a date of invention at least as early as August 2, 1996 is established, prior to the alleged September, 1996, publication date of the Bontchev article. Hence the Bontchev

article is not available as a printed publication reference under §102(a) and so the rejection based on this reference is overcome.

Hence it is requested that this rejection be reconsidered and withdrawn.

All the rejections having been overcome, it is requested that all of pending Claims 1-35 be allowed.

If the Examiner contemplates other action he is requested to call the undersigned at (408) 453-9200.

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<u>Norman R. Klivans</u> Attorney for Applicant(s)	<u>June 1, 1998</u> Date of Signature

Respectfully submitted,

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